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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA,)
10 Plaintiff,)
11 vs.) 2:09-cr-303-JCM (VCF)
12 ERIC LEON CHRISTIAN,)
13 Defendant.) ORDER
14)

15 Presently before the court is the matter of *United States v. Eric Leon Christian*, case number
16 2:09-cr-00303-JCM-VCF. Defendant Christian filed a notice of appeal (doc. #138), purporting to
17 appeal this court's denial of his 28 U.S.C. § 2255 motion to vacate sentence. The Ninth Circuit
18 issued an appellate case number to defendant's appeal, but indicated that it would take no further
19 action until such time as this court granted a certificate of appealability. (Doc. #141).

20 Pursuant to 28 U.S.C. § 2253(c)(1)(B), an appeal of a final order in a proceeding under §
21 2255 may not proceed unless the court issues a certificate of appealability. A certificate of
22 appealability may issue only if the petitioner has made a substantial showing of the denial of a
23 constitutional right. *See* 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by
24 demonstrating that jurists of reason could disagree with the district court's resolution of his
25 constitutional claims or that jurists could conclude the issues presented are adequate to deserve
26 encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Finally, the
27 certificate of appealability must indicate which specific issue or issues satisfy the showing required

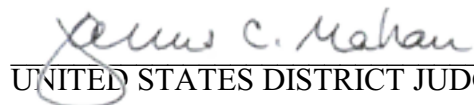
1 by § 2253(c)(2). *See* 28 U.S.C. § 2253(c)(3).

2 In this case, the defendant has not been sentenced. Accordingly, the § 2255 motion to vacate
3 sentence was filed prematurely, and therefore denied without prejudice. The court finds that “jurists
4 of reason could [not] disagree with the district court’s resolution of [the § 2255 motion]” and
5 therefore denies a certificate of appealability.

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the motion for certificate
8 of appealability (doc. #140) be, and the same hereby is, DENIED.

9 DATED February 9, 2012.

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13 UNITED STATES DISTRICT JUDGE
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